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MAILED

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Technology Center 2100

In re Application of: Liang, et al.)
Application No. 09/767,365) **DECISION ON PETITION TO**
Attorney Docket No. 22271-05227) **WITHDRAW HOLDING OF**
Filed: 22 January 2001) **ABANDONMENT UNDER 37 CFR**
For: SCALABLE DERIVATIVE) **§1.181**
SERVICES)

This is a decision on the petition, filed 8 March 2005, requesting the Withdrawal of the Holding of Abandonment of the above-identified application, under 37 CFR §1.181.

The petition is **GRANTED**.

The application was abandoned for failure to file a timely response to the Office action mailed on 7 May 2004. Notice of Abandonment was mailed 8 February 2005.

37 C.F.R. § 1.8(b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In support of the petition, Petitioner has provided a copy of the facsimile response that was submitted 7 October 2004, which included a two month request for extension of time, with authorization to charge the necessary fee to a deposit account, and a copy of an auto-reply response to the facsimile transmission from the United States Patent and Trademark Office acknowledging that 14 pages were received on 7 October 2004. The auto-reply obviates the need for the personal knowledge statement of transmission as it provides the proof of actual receipt.

In addition, the amendment, bearing a certificate of transmission date of 7 October 2004, is currently located in the file.

Accordingly, the petition is **GRANTED**. The Notice of Abandonment is **VACATED**. The Office regrets any inconvenience this may have caused.

The application file is being forwarded to the technical support staff to withdraw the holding of abandonment and to process the amendment filed on 7 October 2004. Note, the fee for excess claims (\$44) and for the two months extension of time (\$215) has been charged to applicant's Deposit Account Number 19-2555. The application file will then be forwarded to the examiner for consideration of the response and action on the merits.



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